

# **VIRGINIA**

---

**Federal Annual Monitoring and Evaluation Report**  
**on the**  
**Virginia Occupational Safety and Health Program**  
**FY 2003**

**Prepared by**  
**Norfolk Area Office - OSHA**

## TABLE OF CONTENTS

Executive Summary .....	Page 3
Introduction .....	Page 4
Assessment of State Performance .....	Page 5
A.    Assessment of State Progress In Achieving Annual Performance Goals.....	Page 5
B.    Assessment of State Performance Of Mandated Activities.....	Page 10
Appendix A	
State OSHA Annual (SOAR) Report.....	Page 17
Appendix B	
State Activity Mandated Measures (SAMM) Report .....	Page 18

## EXECUTIVE SUMMARY

---

The FY 2003 Annual Performance plan for the Virginia Occupational Safety and Health Administration (VOSH) fully supports Virginia's long-term strategic goals while at the same time addressing state-specific issues and concerns. Changing workplace culture in order to improve workplace safety is the central theme of the VOSH strategic plan. The FY 2003 Annual Performance Plan recognized the interconnection and importance of the various program tools (enforcement, consultation, training, partnerships) available to the State, and the Annual Performance Plan was designed to make full use of these tools.

VOSH's approach for achieving its long-term strategic goals is to identify significant problems, determine the most effective ways to address them, use the best mix of available tools, and then measure the results. The VOSH program has adopted three interdependent strategic goals in their Annual Performance Plan which are identical to those adopted by the federal OSHA. In addition to these goals, VOSH utilized Worker's Compensation First Reports of Accidents to promptly investigate amputations and other serious accidents. Other emphasis programs on scaffolding, heavy equipment, overhead high voltage line safety, fall protection and trenching resulted in increased awareness of safety in the construction industry. Increased emphasis was placed on improving safety and health in the government sector in support of the Governor's executive order requiring state agencies to have safety and health programs. Training and compliance assistance are being developed with a Task Force established by the Governor. VOSH continues to hold annual Occupational Safety and Health Conferences; the semi-annual conference was held in Portsmouth, VA, with over 350 attendees. The conference was judged by all participants to be very successful.

In Virginia, there are over 3.2million workers in approximately 183,000 companies (private and public sectors) covered by the Virginia Occupational Safety and Health Act. In FY 2003, VOSH directed all of its budgeted activities to support the Strategic Plan's goals and the Annual Performance Plan. One clear measure of the effectiveness of the VOSH program can be found in Goal 1 of the Commonwealth's Strategic Plan—the reduction of workplace injuries, illnesses and fatalities.

The federal review found that VOSH continued to operate a fully effective private and public sector occupational safety and health program. During this evaluation period, VOSH made considerable progress toward achieving its three major strategic goals:

- reducing workplace injury, illnesses and fatalities
- changing workplace culture toward safety and health
- providing improved services and programs

## INTRODUCTION

---

Virginia's Department of Labor and Industry is the State agency designated by the Governor to administer the Virginia Occupational Safety and Health Plan. The Virginia Occupational Safety and Health Plan was approved September 8, 1976, pursuant to Section 18 of the Occupational Safety and Health Act. The Plan achieved operational status on October 1, 1981. Since then, Virginia has had responsibility for safety and health enforcement with the exception of maritime, longshoring, mining, federal government employees and facilities, contractors working on federal property, and industries regulated by other federal agencies. On August 21, 1984, a Notice was published in the Federal Register certifying that the State had completed all developmental commitments contained in the Plan. Final approval of the Virginia State Plan was published in the Federal Register on November 30, 1988.

Virginia's occupational safety and health regulations and standards are established by the Virginia Safety and Health Codes Board, a regulatory board whose members are appointed by the Governor. The Commissioner of the Department of Labor and Industry, Mr. C. Ray Davenport, is charged by statute with enforcing the regulations and standards of the Board. All VOSH functions are under the direct management of the Commissioner. In FY 2003, the VOSH program included 121 full-time and part-time positions and the State contributed \$3,300,000 in funding its program. Currently, the VOSH enforcement program has thirty-four (34) safety specialists, and eighteen (18) industrial hygienists which are within the required benchmark mandate.

Under Virginia's State Plan, VOSH has jurisdiction over 3.2 million employees in approximately 183,000 establishments. The VOSH program consists of three major units: enforcement, consultation, training and education. VOSH makes use of the State's Worker's Compensation First Reports of Accidents to investigate amputations and other serious accidents.

The enforcement unit inspects places of work, issues citations and penalties for violations of established occupational standards, and responds to fatalities, accidents, and employee complaints about workplace safety and health hazards. The consultation unit provides assistance to Virginia employers to voluntarily comply with applicable requirements without the issuance of citations and penalties. The VOSH consultation program provides free on-site surveys and technical assistance to Virginia businesses, especially small ones. The VOSH program also provides free educational and training programs for employers and employees to assist them in achieving voluntary compliance.

## **ASSESSMENT OF STATE PERFORMANCE**

### **ASSESSMENT OF STATE PROGRESS IN ACHIEVING ANNUAL PERFORMANCE GOALS**

**(See Appendix A, State OSHA Annual Report, for details)**

#### **Goal 1**

##### **IMPROVE WORKPLACE SAFETY AND HEALTH FOR ALL WORKERS**

***Outcome Goal 1.1: Reduce the Number of Worker Injuries, Illnesses and Fatalities.***

**Performance Goal 1.1.A – Reduce three of the most significant types of workplace injuries and causes of illnesses by 15%**

VOSH partially met this performance goal for this evaluation period. There was a 67.9% reduction from the baseline in workplace amputations. However there was not sufficient severity data available for silica and lead exposure to determine a baseline reduction. VOSH conducted 23 Amputation (NEP) inspections with approximately 52.2% of those inspections resulting in serious, willful or repeat violations. VOSH conducted 7 silica (NEP) inspections with 28.6% of them having serious, willful or repeat violations. VOSH also conducted 14 lead (NEP) inspections with approximately 60% of those inspections having either serious, willful or repeat violations issued. VOSH also conducted 18 initial amputation consultation activities, 3 initial silica consultation activities and 1 initial lead consultation activity.

**Performance Goal 1.1.B – Reduce injuries and illnesses by 15% in five (5) high-hazard industries: construction, lumber and wood products, food processing, electrocutions (including overhead high voltage lines) and metal fabrication**

VOSH partially met this performance goal for this evaluation period. There was an 18.4% reduction from the baseline in the food processing industry, a 4.5% increase from the baseline in metal fabrication industry for SIC 3300-3399 but a 9.3% reduction from the baseline in metal fabrication for SIC 3400-3499 and a 32.3% reduction from the baseline in the construction industry. In the lumber and wood products, there was a 5.5 average lost workday injury and illness rate per 100 full time workers which was very slight increase from the baseline of 5.4

**Performance Goal 1.1.C – Decrease fatalities in the construction industry by 15% by focusing on the four leading causes of fatalities: falls, struck-by, crushed-by and electrocutions/electrical injuries (exclusive of overhead high voltage lines)**

VOSH did not meet this performance goal for this evaluation period. There was a 6.5% increase from the baseline for construction fatalities which was mostly due to the large increase in construction in the northern Virginia area. However, VOSH conducted 1333 Safety Planning Guide inspections with approximately 92.3% of the inspection resulting in serious, willful or repeat violations. VOSH conducted 278 Scaffold (LEP) inspections, 110 Trench (NEP) inspections and 37 Heavy Equipment (LEP) inspections. VOSH also conducted 198 initial construction injury consultation activities, 5 outreach activities and 49 technical assistance activities.

**Performance Goal 1.1.D – Reduce injuries and illnesses (LWDII) by 20% in at least 200 workplaces where VOSH initiates an intervention**

VOSH met this performance goal for this evaluation period. Based on the injury/illness data for the number of workplaces where VOSH had an intervention the rates were reduced by 20%.

**Performance Goal 1.1.E – Within six years of the promulgation of final rule, achieve a 20% reduction in fatalities, injuries or illnesses. For program rules or revisions achieve a 20% or greater increase in the rate of current industry compliance.**

This is a long term goal and there is no performance information available for this evaluation period.

## **GOAL 2**

### **CHANGE WORKPLACE CULTURE**

**Outcome Goal 2.1: Promote a Systems Approach to Workplace Safety and Health.**

**Performance Goal 2.1.A – Fifteen percent (15%) of employers in general industry who are targeted for or request a VOSH intervention will implement an effective safety and health program.**

Seven new SHARP worksites were certified. Onsite reviews were conducted at seven sites to assure goals were being attained. VOSH conducted six (6) SHARP renewal certifications. Comprehensive program evaluations increased from 72 to 86, a 17% increase.

**Outcome Goal 2.2: Enhance Worker Involvement in All Aspects of Safety and Health.**

**Performance Goal 2.2.A – One hundred percent (100%) of VOSH on-site activities (e.g. inspections, consultation visits) will include a worker involvement component.**

VOSH met this performance goal for this evaluation period. 100% of VOSH on-site enforcement activities included a worker involvement component and 99.6% of VOSH on-site consultation activities included a worker involvement component.

## **GOAL 3**

### **SECURE PUBLIC CONFIDENCE**

#### **Outcome Goal 3.1: Respond Effectively to Legal Mandates.**

##### **Performance Goal 3.1.A – Initiate inspections of 95% of fatalities and catastrophes within one working day of notification**

VOSH did not meet this performance goal for this evaluation period. Only 93.3% of the fatality and catastrophe inspections were conducted within one working day of notification. This was a 7% improvement from last year's report.

##### **Performance Goal 3.1.B – Initiate investigations of 95% of worker complaints within one working day or conduct an on-site inspection within five working days.**

VOSH did not meet this performance goal for this evaluation period. Only 85.6% of complaints received had an investigation initiated within one working day or an on-site inspection initiated within five working days. However, this was a 10% improvement from last year's report.

##### **Performance Goal 3.1.C – Complete investigation of 80% of “whistleblower” cases within 90 days.**

VOSH did not meet this performance goal for this evaluation period. VOSH conducted 98 discrimination investigations and only 18.4% (18) were completed within 90 days. However, VOSH has greatly reduced its backlog of cases from 112 on April 2003 to only 8 as of February 2004. Only five of those are over 90 days.

#### **Outcome Goal 3.2: Design and Implement Management Systems and Processes.**



**Performance Goal 3.2.A – Maintain, evaluate and improve the information systems necessary to collect performance data and analyze VOSH’s performance.**

VOSH continues to use its current information system. However, upgrading the system is being placed on the “back burner” due to federal budget reductions.

## **A. ASSESSMENT OF STATE PERFORMANCE OF MANDATED ACTIVITIES**

VOSH maintained an occupational safety and health program which effectively complied with all mandatory requirements. With few exceptions, procedures have been established to assure all federally-mandated activities were carried out effectively.

VOSH conducted a total of 2,641 inspections in the private sector during this evaluation period. They were distributed as follows:

	<b><u>SAFETY</u></b>	<b><u>%</u></b>	<b><u>HEALTH</u></b>	<b><u>%</u></b>
Programmed	1,630	78.1	284	51.4
Un-programmed	457	21.9	270	48.7
TOTAL	2,087		554	

In the public sector, VOSH conducted a total of 155 inspections. They were distributed as follows:

	<b><u>SAFETY</u></b>	<b><u>%</u></b>	<b><u>HEALTH</u></b>	<b><u>%</u></b>
Programmed	74	79.7	28	40.0
Un-programmed	11	12.9	42	60.0
TOTAL	85		70	

Three hundred fifty-five (355) more inspections in the private sector and forty-seven (47) more in the public sector were conducted during this reporting period than the last (2002) reporting period.

VOSH conducted forty-seven (47) fatality/catastrophe investigations during this evaluation period and twenty-six (26) were in the construction industry.

<b><u>Mandated Activities</u></b>	<b><u>Measures Related to Mandated Activities</u></b>
Response to Complaints	<p>VOSH adopted the federal goal of initiating complaint inspections within 5 days and complaint investigations within 1 day. Activity measures for this evaluation period indicated the average number of days VOSH took to initiate complaint inspections were 3.42 days and 1.08 days to initiate complaint investigations. VOSH is working to reduce these times to within the set goals. Meetings were conducted with compliance managers and supervisors to emphasize and evaluate the time constraints for complaint processing and inspection scheduling. In addition, VOSH will be reassessing the feasibility of these measures.</p> <p>Complainants were notified of actions taken within the prescribed time constraints in over 93% of the complaints received. This is an improvement from the last reporting period by 1%, but has not met the 100% goal desired. Compliance managers in each of the Regional Offices continue efforts to assure that all complainants are notified within specified time constraints.</p> <p>Fourteen (14) of the fifteen (15) complaints and referrals alleging imminent danger were responded to within 1 day which met 93% of the performance standard of 100%. VOSH procedures require immediate respond to imminent danger complaints and referrals. VOSH will continue to monitor the response to complaints, referrals, and imminent danger situations.</p>
Denial of Entry	<p>Although the SAMM measures indicate two denials of entry, further review found that one denial resulted in no entry because an inspection was not conducted. The initial assignment was as a result of a referral</p>

<b><u>Mandated Activities</u></b>	<b><u>Measures Related to Mandated Activities</u></b>
	from the Federal OSHA Construction Planning Guide, and there was insufficient probable cause for a Virginia warrant to be obtained. In the other case, entry was obtained without a warrant being issued. It appeared the denials were not updated in the IMIS system, and therefore, appeared on the SAMM as 'no entry' obtained.
Abatement Verification	VOSH issued 2839 violations classified as serious, willful, or repeated. Abatement verification was obtained within the specified abatement dates for all of the citations issued. Appropriate abatement verification was also obtained for the 400 citations issued in the public sector.
Citation Processing	VOSH issued citations in less time than the national average. The average number of calendar days from opening conference to the issuance of citations was 44 days for safety inspections and 45 days for health citations. For reference, the national averages are 47 days for safety and 63 days for health inspections.
Effective Sanctions	<p>Serious, willful, or repeated violations were found in 61.60% of the programmed safety inspections conducted by VOSH. This is 12.8% above the national average of 48.8%. On the health side, serious, willful, or repeated violations were found in 43.28% of the programmed inspections conducted. This is 3.68% above the national average of 39.6%.</p> <p>VOSH issued more serious violations per inspections than the national average during this evaluation period. The average number of serious, willful, or repeated violations per inspection with violations was 2.33, exceeding the national average of 2.0. The</p>

<b><u>Mandated Activities</u></b>	<b><u>Measures Related to Mandated Activities</u></b>
	<p>average number of other-than-serious violations per inspection was 1.29, slightly less than the national average of 1.5. The average initial penalty of \$881 was less than the federal average of \$1,322. This was attributed to a large number of inspections conducted in small employer establishments for which higher penalty adjustments are given.</p>

<b><u>Mandated Activities</u></b>	<b><u>Measures Related to Mandated Activities</u></b>
Public Employee Program	<p>VOSH conducted a higher percentage of inspections in the public sector during this period than during the previous three year evaluation periods. The previous three year average was 4.9 percent. VOSH conducted 5.56% of their inspections in the public section during this evaluation period.</p> <p>This increase in public sector activity is as a result of the Governor's executive order requiring state agencies to have a safety and health plan. VOSH is working to assist state agencies on the implementation of these programs.</p>
Review Procedures	The average lapse time from receipt of a contested case to the first level of decision

<b><u>Mandated Activities</u></b>	<b><u>Measures Related to Mandated Activities</u></b>
	<p>making was 136 days. This is below the national average of 171 days. VOSH has been diligently reducing the number of open contested cases during this evaluation period. These cases involve settlement, debt collection and active litigation. This evaluation period saw a continuing reduction in the number of contested cases and a significant increase in the settlement of cases during the contest period due to Regional Directors conducting informal conferences. A Task Force was appointed to reduce the number of open contested cases, and has been successful in this effort.</p>
Program Administration	<p>All required federal program changes were adopted by VOSH within the established time limits. A backlog in reporting state plan changes is being reduced and it is anticipated that it will be eliminated within the next several months due to the implementation of the Automated Tracking System developed by Federal State Operations (FSO) which was scheduled to become operational in March 2003. In addition, during this evaluation the state was active in initiating seventy-four (74) State Plan Changes, which included those actions above. The State also revised and reprinted The Administrative Regulations Manual, effective March 1, 2003, VOSH Closing Conference Guide, revised June 2003, and The Employer Responsibilities and Courses of Action following a VOSH Inspection, revised July 1, 2003.</p>
Standards	<p>All ten (10) of the required Federal program changes were adopted by VOSH during the evaluation period. Two of these adoptions were not within the required six month adoption period, but this was due to Federal OSHA regulatory stays from the original</p>

<b><u>Mandated Activities</u></b>	<b><u>Measures Related to Mandated Activities</u></b>
	effective dates and not an untimely adoption process. These two Federal Program Changes involved Safety Standard for Steel Erection, and Injury and Illness Recording and Reporting Requirements. The VOSH Program also adopted a 'unique' standard for "Fall Protection for Steel Erection", wherein sections 29 CFR 1926.760(a), general requirements, (b) connectors, and (c) controlled decking zones were not adopted. VOSH will continue to cite 29 CFR 1926.28(a) in steel erection when fall protection is not provided for falls between 10 and 25 feet in height. VOSH will also continue to cite 29 CFR 1926.105(a) in steel erection when fall protection is not provided for falls in excess of 25 feet.
Variances	There were no variances requested during this evaluation period.
CASPA	There were no complaints filed about the State's program during this evaluation period
Discrimination	This evaluation period began with a backlog of 160 discrimination cases. This backlog was greatly reduced over the evaluation period. Twenty complaints were closed within the 90 days mandate. None of the cases were meritorious, hence, none were settled.



APPENDIX A

**STATE OSHA ANNUAL (SOAR) REPORT**

## APPENDIX B

# **STATE ACTIVITY MANDATED MEASURES (SAMM) REPORT**